

DETAILED ACTION

CLAIM INTEPRETATION

1. The specification defines "cartridge" as (taken from the pregrant publication text)

[0015] A "cartridge" generally refers to a mixing chamber or body through which thorough mixing of constituents is performed such as, for example, a mixing chamber or a baffle chamber.

2. Thus "cartridge" is read in its broadest reasonable interpretation in light of the specification as a chamber, or bounded passage which mixing occurs. There is no requirement of additional structure to further effect mixing such as baffles, columns, or in-line mixing obstacles, such structure is not required in the definition of "cartridge".

3. The specification defines "mixing canal" and "head" as

[0016] A "mixing canal" refers to a hollow through which constituents are passed and mixed and includes, for example, a tortuous or sinuous path, a channel, a mixing channel, and a baffle.

[0017] A "head" refers to an extension through which mixed constituents flow and includes, for example, a dispensing nozzle, an applicator, a comb with voids through which constituents flow.

- 4.

5. Thus "mixing canal" is read in its broadest reasonable interpretation as inclusive a channel or passage conduit which mixing occurs. In the same manner the term "head" is read in its broadest reasonable interpretation as an extension encompassing conduit, passage, or pipeline with the mixture may flow to an outlet.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 31-35, 37; 40, 44 48, 49, 50 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Kennedy et al 3236457.

The Kennedy document (cited on the IDS) discloses an apparatus and method of operation with two containers 56, 56,; cartridge 102, 104 (having a plenum 104, and a mixing canal hollow passage 104 which mixing occurs, see figure 13) see also, figures 8-13; a head 63, 67, 66, 69 generally at the end along flow channel 104 best seen in figures 8, 9 with an outlet orifice at the end tip of 66. There is also an actuating lever trigger 76 (figure 8, 9, and functionally equivalents means to instant application's lever element 29), and a collar 61, 59, figures 8, 9. The cartridge (generally 104) is disposed between head (63 ,66) and the collar 59, 61. With regards to claim 33 the claim language is narrative to the operation of the device, it is noted that the top of the lever portion of the head releases the contents. Not there is a base 79 in figure 11 which receives and secures the containers within the base 79. Also, note the means for activating (76) a plurality of actuators, the separate means for thoroughly mixing (102, 140) the plurality of constituents., and the means (66) for ejecting, and the separate means for attaching (59, 61) the activating means. The head 63 and cartridge generally 63, or 104, 104 are movable together relative to the collar 59 and containers 56, 56.

7. Claims 31-35, 37, 38-40, 44-51 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 19911776 (note: the English language US pregnant publication 2002/0048693 is of the same family of the DE document (Merck).)

The DE '776 document (cited on the IDS) discloses an apparatus and method of operation two containers (A'), (A); a cartridge generally at (C) and (c); a collar

around the bottom portion of (B), a base (E) for holding the containers (A', A); and a head generally at (d) and also part of the upper top of (B) located above and encompassing (C) and (d), see the portion located at the upper part and the right side of the (b) in the figure. An outlet is provided at the end of (d). The lower upper curved portion of the top of (B), presents a lever section at the top of the head in which releases the contents of each container via the pathway b, b. The flow from the each container flows into a cartridge with plenum at the intersection of the inlets and a mixing canal channel is formed with crossing or overlapping sections. These crossing or overlapping sections is read as presenting columns of an oval or finlike shape between passages.

8. Claims 31-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Gueret 4773562.

The Gueret document discloses an apparatus and method of operation two containers 2a, 2b, A; a cartridge with plenum (generally near 122 shown in figure 4, or 256, 234 as seen in figure 6) at the intersection of the inlets and a mixing canal (generally at 123 in figure 4, or 255, 236 in figure 6), and an outlet at the end of 125 , a collar 19, a base 8 for holding the containers; and a head (at generally at the end of 125 or the structure encompassing the outlet at 125), a lever section is provided at the top of the head in which may be pushed to release the contents of each container via the pathway at 34, 23, 122, 123, and/or alternately (as seen in figure 6), a pathway 256 to the outlet 255, 225 with

the fins 236 within the mixing channel 255, 225 which protrude from the channel walls.

Response to Arguments

9. Applicant's arguments filed 03/11/2008 have been fully considered but they are not persuasive. Applicant alleges that the each prior art references applied above do not show "a plenum in fluid communication with the inputs and into which the constituents flow and are mixed" and the additional structure of the relative positioning of the cartridge to the head. Applicant further alleges that each of the prior art does not show the means-plus-function language.

10. Such arguments have been fully considered, however, is unpersuasive. As pointed out in the respective rejections above, the prior art discloses the recited inputs, plenum, mixing canal, outlet, head, cartridge, and collar in the recited relative positioning.

Conclusion

11. The previously cited prior art made of record in the last office action and not relied upon is considered pertinent to applicant's disclosure. The following discloses the use of fins, columns in a mixing flow path, Larsen 6241379. The Lasserre et al 2002/0117516 document discloses the use of a static mixer in an cartridge dispenser. The following discloses dispensers with flow passages: Safianoff 3575319, Hildebrandt et al 6305578, Skorka et al 4826048, Favre 5611463, Harman 6308863, Jinbo et al 6834778.

12. Applicant has amended new language to the collar the positioning of the cartridge relative to the head and collar, which was not previously presented for consideration upon its merits. Also the amendment has presented a new combination of elements not previously presented in an original combination for consideration upon merits.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner, Art Unit 1797

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